IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 59.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

PAUL M. DE HART, *Respondent*.

BRIEF FOR RESPONDENT.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

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BRIEF FOR RESPONDENT.

OPINIONS BELOW.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-12) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 20-24) is reported at 119 F. (2d) 449.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The statement of the case as given in petitioner's brief, pages 2-4, is substantially correct, except that while the record shows that after retirement 6 months of the year were to be spent in Selby on the Bay, Maryland, it does not show that 6 months of each year after retirement were to be spent in the District of Columbia..

STATUTE INVOLVED.

Section 2(a) of the District of Columbia Income Tax Act, (53 Stat. 1087) Section 980a. Title 20, D. C. Code, 1929, Supplement V, provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"
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> • • • • • • • •

SUMMARY OF ARGUMENT.

I.

Congress did not intend the Act to apply to Federal employees in the District of Columbia unless they had abandoned their domiciles in the states.

II.

The decision of the Court below was based upon correct principles of law and was equitable because it avoided double taxation.

III.

A reversal of the decision of the Court below would immediately deprive at least 24 states of the right to tax Federal employees in the District of Columbia domiciled in those states, and would subject Federal employees from two states to double taxation.

ARGUMENT.

I.

Congress did not intend the Act to apply to Federal employees in the District of Columbia unless they had abandoned their domiciles in the states.

Since the essence of the present case is the interpretation to be given to the word "domiciled", it seems necessary to trace the legislative history of the act imposing the tax liability. The act itself does not define the term.

Reference will be made to the first House bill because it shows the point of departure. According to the report of the House Conferees, the House bill originally provided:

> "(b) the tax to be imposed on all residents of the District of Columbia, regardless of source of income, and on nonresident individuals and corporations on income from sources within the District, with provisions for tax paid in other jurisdictions to avoid double taxation.'"[1]

The language of this report shows clearly that at the outset the House desired to avoid double taxation. It recognizes that there may be persons resident in the District of Columbia who are domiciled in the several states. Accordingly when it was planned to base tax liability upon residence, provision was made for a credit against taxes paid in other jurisdictions.

The bill was amended on the floor of the House so as to exempt from the income tax "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States."[2] This exemption provision was unacceptable to the Senate, and the bill was sent to conference where agreement was reached on the principle that the tax should be

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[1] 84 Cong. Record (Part 8) 8971; for digest of history of H. R. 6577, see 84 Cong. Record (Part 15), Index, p. 849.

[2] 84 Cong. Record (Part 7) 7036.

levied on "every individual domiciled in the District of Columbia on the last day of the taxable year."

There follows an explanation from the report of the managers on the part of the House which throws light upon the omission from the final Act of any provision for a tax credit.

> "(b) the tax is imposed on persons domiciled in the District on the last day of the taxable year, regardless of source of income, and upon corporations on sources from within the District, no tax is imposed on individuals domiciled without the District from sources within the District, and no provision is made for credit allowance to persons domiciled in the District for tax paid to other jurisdictions on income from sources therein."[1]

It seems clear that when the basis of tax liability was shifted from "residence" to "domicile", no provision was made for a tax credit, because the tax was not to be imposed on those persons domiciled outside the District. The omission of the tax credit provision ought not to be construed as sanctioning double taxation, but rather as an indication that the drafters of the bill thought it unnecessary to do so because they had segregated the classes of taxpayers in such a way as to avoid double taxation; that is, those persons domiciled in the states were to pay income taxes to the states, and those persons domiciled in the District were to pay income tax to the District.

It being clear that the Congress did not intend to subject Federal employees in the District of Columbia to double taxation, it is appropriate to inquire whether the Congress intended the Federal employees in the District of Columbia to be subjected to income taxation in the states *or* in the District of Columbia.

Senator Overton, chairman of the managers on the part of the Senate, in reporting the action of the conferees, stated

[1] 84 Cong. Record (Part 8) 8971.

with reference to the imposition of tax liability on the basis of domicile:

> "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and *Federal employees who have been brought into the District from the various States of the Union to serve their Country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia.*"[1]

Counsel for the petitioner refer to this evidence as to the intent of Congress and attempt to dismiss it as being merely an expression of personal opinion (Petitioner's Brief, p. 28). This view is believed to be erroneous and based upon conjecture.

It is urged that the view as to the interpretation of the word "domicile" as given by Senator Overton, also prevailed among the managers on the part of the House, except Representative Dirksen.

On July 12, 1939, the day after Senator Overton's explanatory statement, Mr. Bates of Massachusetts, one of the conferees on the part of the House, replied to a statement by Mr. McCormack that if Federal employees were to be subjected to Federal, State, and District of Columbia income taxes, the Congress would be compelling them involuntarily to give up the exercise of their suffrage.

Mr. Bates stated:

> "That particular point that my colleague from Massachusetts raises was made in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income tax provisions of the

[1] 84 Cong. Record (Part 8) 8825.

> new law, and it is distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also."[1]

A definition of the term "domicile" was announced on the floor of the House which was not challenged, and consequently should be given great weight in determining the interpretation to be given to that word.

Mr. Nichols of the Committee on the District of Columbia submitted the Conference Report which ultimately became the present law:

> "Mr. Nichols: Since the question of the effect of the word 'domicile' in this Act has been raised, I think the House would probably like the legal definition read:
>
> "'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights—There must exist in combination the fact of residence and animus manendi—'
>
> which means residence and his intention to return (sic); so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."[2]

Counsel for the petitioner in their brief at page 27 allege that the statement made by Mr. Bates does not bear upon the point and that the definition read by Mr. Nichols was not adopted by the House. All of the discussion in the Congress is printed in the petitioner's brief (pp. 21-26) and respondent is satisfied that a reading of this discussion leaves the conclusion that the prevailing opinion was that Federal employees in the District of Columbia were not to be subject to the tax unless they had surrendered their domiciles in the States from which they were appointed and acquired domiciles in the District of Columbia. It has been

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[1] 84 Cong. Record (Part 8) 8973.

[2] 84 Cong. Record (Part 8) 8974.

frankly stated by he respondent to the Court below, and in the brief in opposition to the granting of a writ of certiorari, that Mr. Dirksen did not share this view, but it has been maintained and is again maintained that the prevailing view among the conferees was that the interpretation to be accorded to the word "domiciled" would leave the Federal employee liable to income taxation in his home state and exempt in the District of Columbia.

II.

The decision of the Court below was based upon correct principles of law and was equitable because it avoided double taxation.

A.

The decision of the Court below was based upon correct principles of law. The domicile of a Federal employee in the District of Columbia is not to be determined under the same general rules applicable to persons in private employment.

The decision in the Court below was rested squarely upon the statement of law enunciated in the case of James J. Sweeney v. District of Columbia[1] which arose on assentially identical facts. The question for decision was stated by that Court as follows:

> "Boiled down to its essence, the question here is whether a citizen and resident of a state must surrender his state allegiance for all the purposes in which domicil may be controlling when he accepts Federal employment in the District of indefinite or relatively permanent duration."

The decision of that case is as follows:

> "Accordingly we think that one who comes to the District and remains to render service to the Govern-

[1] 72 App. D. C. 30 (1940), 113 F. (2d) 25 (1940), cert. den. 310 U. S. 631.

> ment which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intent to forego his state allegiance. * * * The considerations which we have held controlling require that evidence of intention to change be clear and unequivocal. * * *"

The Court reasoned that a contrary decision would create unjust and intolerable discriminations. It would permit military men, elected officials, and officials appointed for a definite term to retain their state domiciliation, and to deprive of state domiciliation and impose that of the District upon members of the Federal Courts, members of administrative tribunals enjoying long, but not unlimited tenure, and upon Civil Service employees.

The Court advanced additional reasons to support its view:

> "Without regard to constitutional considerations, the system would be strange which would permit or require state domiciliation for elected legislative and executive officials and deny it automatically to co-ordinate judicial officers or compel them to maintain it by residing outside the District and in a state not otherwise of their choice. Equally, if not more, strange would be one so capable of discriminating, in practical consequences and legal effects, between the high and the low, the well-to-do and the poor in the Federal service. If such a price were placed so broadly upon the acceptance of Federal duty, the consequences would be entirely unpredictable, whether for the Government or for the individuals immediately concerned. Many would accept it of necessity. Others would not do so for any preferment. State attachment is not incompatible with Federal service. On the contrary, it remains a compelling allegiance, secondary only to national loyalty, not merely for a few, but for all Federal servants who do not prefer District domiciliation. Our dual system contemplates a harmony, not an antagonism, of state and national allegiances. Each is the complement, not the antithesis, of the other. A rule which would compel surrender of the one in order to

> exercise the other fully would be inconsistent with these principles. Creation of a vast army of Federal officials and employees detached from the states in all of the civil and political relations which domicil sustains is not a thing desired or desirable, whether regarded from the point of view of the Government, the states, or the individuals. That connection with the home community is a key pin in the structure of the dual system. It should not be weakened or destroyed, as it would be by acceptance of respondent's view." (Footnotes omitted)

Counsel for the petitioner attempt to avoid the rule of law enunciated in the Sweeney case by arguing that Federal employees may be domiciled in the District of Columbia for purposes of taxation, and domiciled in their home states for other purposes. While admitting that there is a difference between citizenship and domicile, it cannot be admitted that domicile is divisible.

One of the few propositions in the law of domicile upon which all authorities are agreed is that an individual may have one, and only one, domicile.

Mr. Justice Holmes in the case of *Williamson* v. *Osenton*[1] stated:

> "The very meaning of domicile is the technically preeminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Bergner and Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157. In its nature it is one, and if in any case two are recognized for different purposes, it is a doubtful anomaly. Dicey, Conflict of Laws, 2d Ed. 98."
>
> See also: Beale, Conflict of Laws, (1935) Vol. I, p. 123, Kennan on Residence and Domicile, (1934) Sec. 13, pp. 34-35.

The Court below considered the proposition that there is a distinction between civil and political domicile and the proposition was rejected by the Court as being "more theo-

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[1] 232 U. S. 619, 625 (1914).

oretical than practical, argumentatively specious than safely tenable."[1]

The rule that the Federal employee is entitled to retain his domicile in the state from which he was appointed, which was confirmed in the *Sweeney* case, is supported by the clear weight of judicial authority, many instances of Congressional recognition in principle, and the long-established custom and practice of other officials and departments.[2]

Since domicile must be one, the question seems to be whether, after residence in the District of Columbia, coupled with the intent to stay here so long as his Federal employment continues, the Federal employee shall be conclusively deemed to be domiciled in the District of Columbia, or whether he shall be permitted to retain the domicile of the state from which he was appointed if he so desires.

In this connection it is pertinent to note that practically all states have provisions either in their Constitution or laws, requiring domicile as a condition for the exercise of the franchise and providing that absence in the Government service does not prevent loss of "residence."

In this case, for example, Article VIII, Section 13, of the Constitution of the Commonwealth of Pennsylvania reads:

> "For the purpose voting no person shall be deemed to have gained a residence by reason of his presence, or

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[1] 72 App. D. C. 30, 35 (1940); 113 F. (2d) 25, 30 (1940). The idea of "fiscal domicile" appearing in European tax treaties as applied to individuals means the same as "domicile" in this country, League of Nations C. 118. M. 57. 1936. II. A. pp. 9 and 23; it was adopted of necessity and was not intended to change concepts of domicile in other fields, L. of N., F. 212 of February 7, 1925, p. 20; "fiscal domicile" means one thing for income tax and something else for succession duties, F/Fiscal/111 of June 22, 1939, p. 17. Finally the idea of "fiscal domicile" has not been accepted by this country in dealing with continental countries. (U. S.-Swedish Tax Convention, signed March 23, 1939; U. S. Treaty Series No. 958, and U. S.-French Tax Convention, signed July 25, 1939, 76th Congress, 3d Session, Executive Report No. 7.)

[2] See citations and footnotes in Sweeney v. District of Columbia, 72 App. D. C. 30, 37 (1940); 113 F. (2d) 25, 32 (1940). The rule is of ancient origin. Bruce v. Bruce (1790), 2 Bosanquet & Puller 229, and Atherton v. Thornton (1835), 8 N. H. 178.

lost it by reason of his absence, while employed in the service, either civil or military of this State or of the United States. * * *"[1]

If this Court confirms the common law doctrine that domicile is indivisible and at the same time rules that Federal employees are domiciled in the District of Columbia, it will deprive Federal employees of their franchise in the several states.

B.

The decision of the Court below was equitable because it avoided double taxation.

The decision of this Court in the case of *Graves* v. *O'Keefe*, 306 U. S. 466, was handed down on March 27, 1939. That decision stated that there was no principle of constitutional law exempting Federal salaries from state taxation or exempting state salaries from Federal taxation. Within sixteen days, on April 12, 1939, the Public Salary Tax Act was approved.[2] That Act extended the Federal income tax to state compensation and provided that state income tax laws may apply to Federal compensation.

A large number of state legislatures immediately amended their income tax laws to eliminate Federal salaries from the list of items of income to be excluded from gross income. In 1939, seventeen states removed the exemption heretofore accorded. The laws of nine others automatically provided for taxation of Federal salaries whenever the Federal law permitted, or whenever state salaries became subject to Federal taxation. Six additional states removed the exemptions in 1940 and 1941.

It is abundantly clear that Federal salaries are, in fact, taxable under the laws of all states having personal income tax laws. Whether salaries derived by Federal employees in the District of Columbia are subject to these state laws is a matter of interpretation.

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[1] Purdon's Pennsylvania Statutes, 1936, p. xxx.

[2] 53 Stat. (Part 2) 574. See Title I, Sections 1 and 4.

Counsel for the petitioner in their brief at pages 16 and 17 allege:

> "Examination of the laws and regulations of the remaining twenty-three states disclose that in only one instance do such laws and regulations indicate an intention to extend the tax to individuals (either Government employees or others) having their homes and actually residing and earning their income without the state."

Counsel for the respondent has likewise examined carefully all of the income tax laws and some of the regulations of the various states and comes to contrary conclusion. Not being content to rest his case upon such an examination alone, on September 3, 1941, he addressed the State Income Tax Departments of 32 states which were believed to subject the salaries in question to state taxation, and inquired whether "You would consider a person who claims to be domiciled in your State, but who works for the Federal Government in the District of Columbia and maintains a home here, as liable to your State Income Tax on his Federal salary."

Of the 31 replies received, 25 states unequivocally replied that Federal employees in the District of Columbia, claiming domicile in the states from which they were appointed, were subject to state taxation on their Federal salaries. Five state administrators replied in the negative, and one reply was doubtful.

There has been filed with the Clerk of this Court nine copies of a table entitled "Liability to State Income Taxation of Federal Employees in the District of Columbia Claiming Domicile in the States From Which They Were Appointed." The second column of this table has a carefully prepared list of citations to those provisions of the state income tax laws which define the term "residents" and make Federal salaries subject to state taxation. The third column indicates briefly the opinions of the state tax administrators. The originals of the letters containing these opinions have also been filed with the Clerk.

If the Court below had held Federal employees from the various states to be domiciled in the District of Columbia, they would have been subjected to income taxation on those salaries in the District of Columbia as well as in the majority of the states. The decision of the Court below was, therefore, entirely equitable.

III.

A reversal of the decision of the Court below would immediately deprive at least 24 states of the right to tax Federal employees in the District of Columbia domiciled in those states, and would subject Federal employees from two states to double taxation.

While it is believed that the Court below was correct in permitting Federal employees in the District of Columbia to retain their domiciles in the states from which they were appointed, it is recognized that it is possible for this Court to assign Federal employees a domicile in the District of Columbia. Since no individual may be domiciled in more than one place, to hold that a Federal employee is domiciled in the District of Columbia is to relieve him of domicile in the state from which he was appointed. To relieve a Federal employee in the District of Columbia of domicile in the state from which he was appointed is to relieve him of taxation in that state, since nearly all states which tax Federal employees in the District of Columbia do so on the ground that they are domiciled in those states.

It is argued to this Court that the Public Salary Tax Act was intended to permit the several states to tax all Federal salaries. There is no express condition forbidding them to tax Federal salaries of their citizens derived in the District of Columbia. Nevertheless, a reversal of the decision of the Court below will bar them from continuing in this field of taxation.

A reversal of the decision of the Court below by this Court would immediately subject Federal employees from

Delaware and Missouri to double taxation, whereas at the present time they are subject to income taxation only in those states. These states impose liability on the basis of *citizenship* as well as residence.[1] To hold that Federal employees from the states are domiciled in the District of Columbia would be to subject them to income taxation in the District of Columbia while leaving them liable to taxation in those states. The affirmation of the decision of the Court below would leave them liable to taxation in those states alone.

Essentially, the question in the case *Graves* v. *O'Keefe* was one of taxation, as opposed to escape from taxation. In the present case, the essential question has been taxation, as against double taxation; but in its final stage the question is: where shall the Federal employee in the District of Columbia be subjected to income taxation? It is submitted that the legislative history of the act, the law, and the equities require that the Federal employee in the District of Columbia who intends to return to his home state be subjected to but one income tax, and that in the state from which he comes.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that respondent was not domiciled in the District of Columbia on December 31, 1939, and that the decision of the Court of Appeals should be affirmed.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

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[1] Revised Code of Delaware, 1935, Sec. 144 (b) (1), and Revised Stat. of Missouri, 1939, Vol. II, Sec. 11343 (p. 2972).

p. p. 2, 4, 7, 10

SUPREME COURT OF THE UNITED STATES.

Nos. 58 and 59.—October Term, 1941.

58	District of Columbia, Petitioner, *vs.* Henry C. Murphy.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
59	District of Columbia, Petitioner, *vs.* Paul M. De Hart.	

[December 15, 1941.]

Mr. Justice Jackson delivered the opinion of the Court.

These cases, which have been argued together, differ somewhat in facts, but each involves a controversy as to whether respondent was domiciled within the District of Columbia on December 31, 1939, within the meaning of § 2(a) of the District of Columbia Income Tax Act,[1] which lays a tax on "the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year." The following facts appear from proceedings before the Board of Tax Appeals for the District of Columbia:

The respondent in No. 58, a single man, first came to the District of Columbia in 1935 to work as an economist in the Treasury Department, and was blanketed into Civil Service in that position in July, 1938. He came here from Detroit, Michigan, and has ever since continued to be a registered voter and has voted in the elections and primaries in Wayne County, Michigan. He was born in New London, Connecticut, in 1905, and when five years old moved with his parents to Los Angeles, California, where he resided until 1926, when he removed to Berkeley, California. His parents live in California. In 1929 he completed his studies at Brown University and immediately thereafter accepted employment in a trust company in Detroit, Michigan, of which one of his former professors at Brown was vice president. While in Detroit, respondent lived first in a rooming house and later in an apartment. He owns no property there. In the District of Columbia he lives in an apartment, which

[1] 53 Stat. 1087; 20 D. C. Code (Supp. V, 1939) § 980(a).

he has furnished himself. His present employment pays him $6,500 a year, while that which he left in Detroit paid but $6,000. He testified before the Board of Tax Appeals that he does not think he would improve his condition by returning to Detroit, but that "It is the place to which I will return if I ever become disemployed by the Government, which I hope will not happen . . . ." Although he has no present connection with the trust company, he believes that he could go back with it if he should return to Detroit. If a better position than he now has should be offered in a city other than Detroit, he "very likely would" accept it, despite a "preference for Detroit" based on a belief that he "would fit in more easily" there.

Respondent claimed that Detroit was his "legal residence" and that he was not domiciled in the District of Columbia. The Board of Tax Appeals for the District of Columbia found "as a fact" that when he came to Washington in 1935 he "had an intention to remain and make his home in the District of Columbia for an indefinite period of time; and that such intention has ever since, and still does remain with him; and that if he has any intention to return and make his home in Detroit, it is a floating intention." The Board held, however, "as matter of law," that on December 31, 1939 the last day of the taxable year, petitioner was not domiciled in the District of Columbia, believing that it was compelled to do so by the decision of the United States Court of Appeals for the District of Columbia in *Sweeney* v. *District of Columbia*, 113 F. 2d 25, certiorari denied, 310 U. S. 631.

The respondent in No. 59 lived in the District of Columbia for twenty-six years after coming here from Pennsylvania in 1914 to accept a clerical position of indefinite tenure under Civil Service in the Patent Office. He was then on a year's leave of absence from a railroad by which he was employed, but continued in the Civil Service to the time of hearing, becoming Chief Clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington. Single when he came, in 1917 he married a native of Washington, who died in 1935 without children. Shortly after their marriage the couple purchased as a home, premises at 1426 Massachusetts Avenue, S. E., in the District of Columbia, in which respondent still lives. In about 1925, he purchased a lot at "Selby on the Bay" in nearby Maryland, and before his wife's death he bought a building lot in

the District of Columbia, acting on his wife's pleas for a summer place and a better residence. He agreed with his wife that on his retirement six months would be spent at Selby. He testified that he never desired to purchase the lot in the District of Columbia, but did so at the insistence of his wife. He put a "For Sale" sign on it when she died, and both lots, which he still owns, are up for sale. He has deposits in three Washington financial institutions and owns first trust notes on property located in Maryland and Virginia.

In 1915 respondent became a member of a Lutheran church in Washington, and has ever since been an active member, at one time serving as president of its Christian Endeavor Society. He is a contributor to Washington charities, a member of the Motor Club of Washington, and of the Washington units of "Tall Cedars of Lebanon" and the "Mystic Shrine," both identified with freemasonry. He has filed his federal income-tax returns with the Collector of Internal Revenue at Baltimore, and always paid to the District of Columbia an intangible property tax while that tax was in effect.

Respondent had resided in Pennsylvania from birth until he left for Washington. He claimed as his "legal residence" the residence of his parents in Harrisburg, where they still keep intact his room in which are kept some of his clothes and childhood toys. Though paying nothing as rent or for lodging, he has from time to time made presents of money to his parents. He has visited his parents' home in Harrisburg over week ends at least eight times a year, and has been there annually between Christmas and the New Year. A registered voter in Pennsylvania, he has voted in all its general elections since he became of age. He paid the Pennsylvania poll tax until it was superseded by an occupational tax, which he has also paid. Payment of such taxes was a prerequisite to voting.

In 1912 respondent became a life member of the Robert Burns Lodge No. 464, Free and Accepted Masons, and of the Harrisburg Consistory, Scottish Rite, both Masonic bodies. While he resided in Harrisburg he was a member of the Bible Class of the Pine Street Presbyterian Church, which he still attends on visits there, and to which he made substantial contributions in 1939. He owns jointly with his father a note secured by a mortgage on Pennsylvania real estate. Respondent testified that he expected to retire from Civil Service in four years and intended then to sell his house and "leave Washington."

The Board found "as a fact" that at the end of one year after he came to the District in 1914 respondent "had an intention to remain and make his home in the District of Columbia for an indefinite period of time and that intention remained with him, at least until the death of his wife." As in No. 58, it considered itself bound by the *Sweeney* case, *supra*, and accordingly held "as a matter of law" that the petitioner was not domiciled in the District on December 31, 1939, and never had been.

The decisions in both cases were affirmed on review by the United States Court of Appeals for the District of Columbia. 119 F. 2d 449, 451. The cases were brought here on writs of certiorari because of the importance of the questions involved. 313 U. S. 556.

Although the District of Columbia Income Tax Act made "domicile" the fulcrum of the income tax, the first ever imposed in the District, it set forth no definition of that word. To ascertain its meaning we therefore consider the Congressional history of the Act, the situation with reference to which it was enacted, and the existing judicial precedents, with which Congress may be taken to have been familiar in at least a general way. *United States* v. *Dickerson*, 310 U. S. 554, 562.

As introduced into and passed by the House of Representatives, the bill which, with amendments, became the Act, laid a tax upon income of residents from whatever source derived, and upon income of nonresidents from sources within the District, with a provision for credit for the payment of income taxes elsewhere. H. R. 6577, 76th Cong., 1st Sess., §§2(a), 4(a), 9(a),(b). The bill was amended on the floor of the House to except "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States." 84 Cong. Rec. 7036. It was unacceptable to the Senate in this form, and it was agreed in conference that the tax should be levied "upon every individual domiciled in the District of Columbia on the last day of the taxable year," with no provision for credit for income taxes paid elsewhere. H. R. Rep. Nos. 1093, 1206, 76th Cong., 1st Sess., p. 3; Sen. Doc. No. 92, 76th Cong., 1st Sess., p. 3. This was agreed to by the Senate and by the House of Representatives, and became part of the Act under consideration.

The conference agreement was presented to the Senate by Senator Overton, chairman of the Senate conferees, with the following explanation: "Mr. President, I now call attention to the fact that the

individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia." 84 Cong. Rec. 8824. Senator Overton also stated: "I took the position before the District of Columbia Committee and in conference that I would not support any legislation which would exempt Senators and Members of the House of Representatives and their official force from an income tax in the District of Columbia but would impose it on all others I then took the position in conference that if we imposed an income tax only on those domiciled within the District, then we would be imposing it only on those who of their own volition had abandoned their domiciles in the States of their origin and had elected to make their permanent home or domicile here in the District of Columbia. Such persons, it may be justly contended, have no cause to complain against an income tax that is imposed upon them only because they have chosen to establish within the District of Columbia their permanent[2] places of abode and to abandon their domiciles within the States." 84 Cong. Rec. 8825.

In the House, Representative Nichols, chairman of the House conferees, and also chairman of the House District Committee in charge of fiscal affairs, submitted the conference report and stated: "Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read: 'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights.[3] . . . There must exist in combination the fact of residence and animus manendi—' which means

[2] We do not understand "permanent" to have been used in a literal sense. Of course it cannot be known without the gift of prophecy whether a given abode is "permanent" in the strictest sense. But beyond this, it is frequently used in the authorities on domicile to describe that which is not merely "temporary," or to describe a dwelling for the time being which there is no presently existing intent to give up. And further, compare a statement by Representative Dirksen on the floor of the House, 84 Cong. Rec. 8973.

[3] Exercise of political rights elsewhere cannot be considered as meant to be conclusive on the issue of taxability in the District. See statement by Representative Dirksen on the floor of the House. *Ibid.*

residence and his intention to return [*sic*]; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States." 84 Cong. Rec. 8974.

Representative Bates, another of the House conferees, stated in response to a question regarding the possibility of triple taxation, "We raised that particular point [in conference] because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation . . . ." 84 Cong. Rec. 8973.

The unusual character of the National Capital, making the income tax a "very explosive and controversial item,"[4] was vividly before the Congress, and must also be considered in construing the statute imposing the tax.

The District of Columbia is an exceptional community. It is not a local municipal authority, but was established under the Constitution as the seat of the National Government. Those in Government service here are not engaged in local enterprise, although their service may be localized. Their work is that of the nation, and their pay comes not from local sources but from the whole country. Because of its character as a federal city, there is no local political constituency with whose activities those living in it may identify themselves as a symbol of their acceptance of a local domicile.

Not all who flock here are birds of a feather. Some enter the Civil Service, finding tenure and pay there more secure than in private enterprise. Political ties are of no consequence in obtaining or maintaining their positions. At the other extreme are those who hold appointive office at the pleasure of the appointing officer. These latter, as well as appointive officers with definite but unprotected tenure, and all elective officers, usually owe their presence here to the intimate and influential part they have played in community life in one of the States.

Relatively few persons here in any branch of the Government service can truthfully and accurately lay claim to an intention to sever themselves from the service on any exact date. Persons in all branches usually desire, quite naturally and properly, to continue family life and to have the comforts of a domestic establishment for whatever may be the term of their stay here. This is true of many

[4] 84 Cong. Rec. 72.

Senators and Congressmen, cited by Senator Overton as typical of those whom the limitation of the statute to persons "domiciled" here "necessarily excludes."

Turning to the judicial precedents for further guidance in construing "domicile" as used in the statute, we find it generally recognized that one who comes to Washington to enter the Government service and to live here for its duration does not thereby acquire a new domicile. More than a century ago, Justice Parker of New Hampshire observed that "It has generally been considered that persons appointed to public office under the authority of the United States, and taking up their residence in Washington for the purpose of executing the duties of such office, do not thereby, while engaged in the service of the government, lose their domicil in the place where they before resided, unless they intend on removing there to make Washington their permanent[5] residence." See *Atherton* v. *Thornton*, 8 N. H. 178, 180. By and large, subsequent cases have taken a like view.[6] It should also be observed that a policy against loss of domicile by sojourn in Washington is expressed in the constitutions and statutes of many states.[7] Of course no individual case, constitution, or statute is controlling, but the general trend of these authorities is a significant recognition that the distinctive character of Washington habitation for federal service is meaningful to those who are served as well as to those in the service.

From these various data on Congressional intent, it is apparent that the present cases are not governed by the tests usually employed in cases where the element of Federal service in the Fed-

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[5] See note 2, *supra*.

[6] Walden v. Canfield, 2 Rob. (La.) 466; Lesh v. Lesh, 13 Pa. Dist. Ct. 537; see Woodworth v. St. Paul, M. & M. Ry. Co., 18 F. 282, 284; Commonwealth v. Jones, 12 Pa. St. 365, 371; cf. Newman v. United States, 43 App. D. C. 53, 70; reversed on another ground, 238 U. S. 537; Deming v. United States, 59 App. D. C. 188; Campbell v. Ramsey, 150 Kans. 368, 388; Hannon v. Grizzard, 89 N. C. 115. But cf. Bradstreet v Bradstreet, 18 App. D. C. 223; Sparks v. Sparks, 114 Tenn. 666.

Professor Beale has summarized the cases as follows: "Presence for the purpose of performing the duties of a civil office will not of itself effect a change of domicil; there is no inference of *animus manendi* from the fact of the new residence, since it is explained by the fact of office holding. It makes no difference whether the office is elective or appointive; nor is it material whether the appointment is in its nature merely temporary or has a degree of permanence, though the permanence of the appointment is an element to be considered in determining the domicil." I Beale, Conflict of Laws § 22.6. See also, Restatement, Conflict of Laws, pp. 42-43.

[7] 1 Beale, Conflict of Laws, p. 172, note 2.

eral City is not present.[8] We hold that a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in the Government service. A contrary decision would disregard the statements made on the floor of Congress as to the meaning of the statute, fail to give proper weight to the trend of judicial decisions, with which Congress should be taken to have been cognizant, and result in a wholesale finding of domicile on the part of Government servants quite obviously at variance with Congressional policy. Further, Congress did not intend that one living here indefinitely while in the Government service be held domiciled here simply because he does not maintain a domestic establishment at the place he hails from. Such a rule would result in taxing those unable to maintain two establishments, and exempting those able to meet such a burden—thus reversing the usual philosophy of income tax as one based on ability to pay.

On the other hand, we hold that persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled.[9] A decision that the statute lays a tax only on those with an affirmative intent to remain here the rest of their days would be at odds with the prevailing concept of domicile, and would give the statute scope far narrower than Congress must have intended.

Cases falling clearly within such broad rules aside, the question of domicile is a difficult one of fact to be settled only by a realistic and conscientious review of the many relevant (and frequently conflicting) *indicia* of where a man's home[10] is and according to the established modes of proof.

The place where a man lives is properly taken to be his domicile until facts adduced establish the contrary. *Ennis* v. *Smith*, 14

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[8] Cf. Williamson v. Osenton, 232 U. S. 619, 624; Gilbert v. David, 235 U. S. 561.

[9] This is not inconsistent with our holding that domicile here does not follow from mere indefiniteness of the period of one's stay. While the intention to return must be fixed, the date need not be; while the intention to return must be unconditional, the time may be, and in most cases of necessity is, contingent. The intention must not waver before the uncertainties of time, but one may not be visited with unwelcome domicile for lacking the gift of prophecy.

[10] Of course this term does not have the magic qualities of a divining rod in locating domicile. In fact, the search for the domicile of any person capable of acquiring a domicile of choice is but a search for his "home". See Beale, Social Justice and Business Costs, 49 Harv. L. Rev. 593, 596; 1 Beale, Conflict of Laws, § 19.1.

How. 400, 423; *Anderson* v. *Watt*, 138 U. S. 694, 706. The taxing authority is warranted in treating as *prima facie* taxable any person quartered in the District on tax day whose status it deems doubtful. It is not an unreasonable burden upon the individual, who knows best whence he came, what he left behind, and his own attitudes, to require him to establish domicile elsewhere if he is to escape the tax.

To hold taxable one who contends that he is not domiciled here, the Board need not find the exact time when the "attitude and relationship of person to place" which constitutes domicile, *Texas* v. *Florida*, 306 U. S. 398, 411, were formed, so long as it finds they were formed before the tax day. What was at first a firm intent to return may have withered gradually in consequence of dissolving associations elsewhere and growing interests in the District. It is common experience that this process usually is unmarked by any dramatic or even sharply defined episode. The taxing authority need not find just when the intent was finally dissipated; it is enough that it finds that this has happened before the tax day.

If one has at any time become domiciled here, it is his burden to establish any change of status upon which he relies to escape the tax. *Anderson* v. *Watt*, *supra*, at p. 706.

In order to retain his former domicile, one who comes to the District to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service. A mere sentimental attachment will not hold the old domicile. And residence in the District with a nearly equal readiness to go back where one came from or to any other community offering advantages upon the termination of service is not enough.

One's testimony with regard to his intention is of course to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negatived by other declarations and inconsistent acts.

Whether or not one votes where he claims domicile is highly relevant but by no means controlling.[11] Each state prescribes for itself the qualifications of its voters, and each has its own machinery for determining compliance with such qualifications. A vote cast without challenge and adjudication may indicate only laxity of the

[11] See statements of Representative Dirksen, 84 Cong. Rec. 8973.

state officials, and even an adjudication of the right to vote canno preclude the levy of a tax by an arm of the Federal Government On the other hand, failure to vote elsewhere is, of course, not con clusive that domicile is here.

Also of great significance is the nature of the position which bring one to or keeps him in the service of the Government: whether con tinuous or emergency, special or war-time in character; whether re quiring fixed residence in the District or only intermittent stays whether entailing monetary sacrifices or betterment; and whethe political or non-political. Those dependent upon the action of local constituency on the first Tuesday after the first Monday i November are of course loath to leave their local identification behind when taking up Government duties in Washington.

Of course the manner of living here, taken in consideration wit one's station in life, is relevant. Did he hire a furnished roon or establish himself by the purchase of a house? Or did he ren a house or apartment? Has he brought his family and dependent here? Has he brought his goods? What relations has he t churches, clubs, lodges, and investments that identify him with th District?

All facts which go to show the relations retained to one's forme place of abode are relevant in determining domicile. What bridge have been kept and what have been burned? Does he retain a plac of abode there, or is there a family home with which he retain identity? Does he have investments in local property or enter prise which attach him to the community? What are his affilia tions with the professional, religious, and fraternal life of the com munity, and what other associations does he cling to? How per manent was his domicile in the community from which he came Had it long been a family seat, or was he there a bird of passage Would a return to the old community pick up threads of close as sociation? Or has he so severed his relations that his old com munity is as strange as another? Did he pay taxes in the old com munity because of his retention of domicile which he could hav avoided by giving it up? Were they nominal or substantial In view of the legislative history showing that Congress was con cerned lest there be "triple taxation"—Federal, State and Distric —the Board should consider whether taxes similar in character t those laid by this Act have been paid elsewhere. See statement o Representative Bates, quoted *supra*, p. 6.

Our mention of these considerations as being relevant must not be taken as an indication of the relative weights to be attached to them, as an implied negation of the relevance of others, or as an effort to suggest a formula to handle all cases that may arise, or the possibility of devising one.

In view of what we have said, it is clear that the present cases did not call for rulings of non-taxability "as a matter of law." On the other hand, we do not consider whether taxability follows as a matter of law, as petitioner contends it does, for the factual inquiries and findings of the Board, made under a view of the law not our own, are quite likely not in all respects those which the Board would have made had it proceeded with knowledge of our opinion, and are in some respects ambiguous for the purpose of decision in accordance with it. Accordingly, we reverse the decisions by the United States Court of Appeals for the District of Columbia and remand these cases to that Court with directions to remand to the Board for further proceedings in conformity with this opinion.

Reversed.

The CHIEF JUSTICE, Mr. Justice ROBERTS, and MR. JUSTICE REED, took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk, Supreme Court, U. S.